

REMARKS

The Final Office Action dated September 12, 2007 contained a final rejection of claims 1-34. The Applicants have amended claims 1, 12 and 23. Claims 1-34 are in the case. Please consider the present amendment with the attached Request for Continued Examination (RCE) under 37 C.F.R. § 1.114. This amendment is in accordance with 37 C.F.R. § 1.114. Reexamination and reconsideration of the application, as amended, are requested.

The Office Action rejected claims 1-4, 8-14, 16-18, 26, 29-31 and 33-34 under 35 U.S.C. § 103(a) as allegedly being anticipated by Cheatle et al. (U.S. Patent Publication No. 2002/0140988) in view of Wang (U.S. Patent No. 6,263,086).

The Applicants respectfully traverse this rejection based on the amendments to the claims and the arguments below.

The Applicant's claimed invention now includes before registering the visually unique human-recognizable logo, making a determination to confirm a predetermined difference between previous registrations to avoid misrecognition and intentional tampering. Support for this newly added feature can be found throughout the specification and at least in paragraph [0028] of the Applicants' U.S. Patent Publication No. 2005/0015370.

In contrast, the combined references are missing these newly added features as specifically claimed. For example, the combined references merely disclose taking an electronic image of a scene with a barcode in the background of the scene and recognizing and reading the barcode by the camera taking the picture for future linking of information using the barcode (see Abstract, FIGS. 1-2 and paragraphs [0001] – [0004] and [0054] of Cheatle et al.) and automatic detection and retrieval of embedded

invisible digital watermarks and retrieval of digital watermarks from halftone images (see Abstract of Wang).

Although the combined references disclose using an invisible watermark retrieval system and an image signal together with a link information signal to provide associated additional link information (see paragraph [0001] of Cheatile et al.), this is very different from the Applicants' claimed invention. Namely, the retrieval system of the combined references explicitly states that "watermark retrieval depends on the pixel-to-pixel comparison between a bitmap of a halftone image and the bitmap of the halftone image having a certain shift relative to itself" (see Summary of Wang), which is very different from the Applicants' claimed **before registering** the visually unique human-recognizable logo, making a determination to confirm a predetermined difference between previous registrations to avoid misrecognition and intentional tampering.

Further, the Applicants respectfully disagree with the Examiner's position with regard to the Applicants' claimed prominently displaying in a physical setting a unique human-recognizable logo having sets of coordinated color-sets for the logo, including a border and a background and tracking legal ownership of the unique human-recognizable logo by registering the unique human-recognizable logo with an official agency. For instance, the Examiner stated that "...wherein it is *inherent* to the ability to track and establish ownership rights that said watermark must be somehow registered for tracking..." **[emphasis added]**. Unquestionably, this inference by the Examiner was made without an implicit or explicit disclosure, teaching or suggestion in the combined references because it was made with the benefit of impermissible hindsight.

The Examiner cannot make inferences of certain elements by taking a statement from the reference out of context and using the benefit of hindsight. It is well-settled in the law that improper hindsight occurs when knowledge and advantages from the Applicant's disclosure are used or words or phrases are arbitrarily picked and chosen from references to recreate the Applicant's invention. Crown Operations International, Ltd. v. Solutia, Inc., 289 F.3d 1367, 62 USPQ2d 1917 (Fed. Cir. 2002). In particular, the combination of elements in a manner that reconstructs the Applicant's invention only with the benefit of **hindsight** is insufficient to present a *prima facie* case of obviousness. Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc., 796 F.2d 443, 230 USPQ 416 (Fed. Cir. 1986).

Even if the references in question seem relatively similar "...**the opportunity to judge by hindsight is particularly tempting**. Hence, the tests of whether to combine references need to be applied rigorously," especially when the Examiner uses a reference that does not explicitly disclose the exact elements of the invention or **teaches away** from the Applicant's claimed invention, which is the case here. McGinley v. Franklin Sports Inc., 60 USPQ 2d 1001, 1008 (Fed. Cir. 2001). Since hindsight cannot be used to support the rejections, the combined cited references cannot render the Applicant's invention obvious and the rejection is improper and should be withdrawn. Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc.

As such, since the combined references do not disclose all of the elements of the claimed invention, they cannot render the claims obvious. Hence, the Applicants respectfully submit that the rejection under 35 U.S.C. 103 of claims 1-4, 8-14, 16-18, 26, 29-31 and 33-34 should be withdrawn.

The Office Action rejected claims 5-7, 15, 19, 20-27, 28 and 32 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Cheatle et al. and Wang in view of Bollman et al. (U.S. Patent No. 5,978,519).

The Applicants respectfully traverse this rejection based on the amendments to the claims and the arguments below.

Specifically, when the barcode system of Cheatle et al. and the watermark system of Wang is combined with Bollman et al. (Bollman et al. simply adds a method for automatic image cropping), the combined references are still missing the Applicants' above argued newly amended features. Therefore, the combined references do not disclose, teach or suggest all of the Applicants' claimed features.

Hence, since the combined references are missing features of the Applicants' claimed invention, the combined references cannot render the Applicants' invention obvious. This failure of the cited reference to disclose, suggest or provide motivation for the Applicants' claimed invention indicates a lack of a *prima facie* case of obviousness and, thus, the obviousness rejection should be withdrawn (MPEP 2143).

Last, with regard to the dependent claims, since they depend from the above-argued respective independent claims, they are therefore patentable on the same basis. (MPEP § 2143.03).

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Thus, it is respectfully requested that all of the claims be allowed based on the amendments and arguments. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. Additionally, in an effort to further the prosecution of the subject application, the Applicant kindly requests the Examiner to telephone the Applicant's attorney at **(818) 885-1575**.

Please note that all mail correspondence should continue to be directed to

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